

CERTIFICATE OF EXPRESS MAILING: I hereby certify that this paper and the documents referred to as attached therein are being deposited with the United States Postal Service using "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to "Commissioner of Patents and Trademarks, Washington, D.C. 20231" using express mail label number EL 977270104 Signed: [Signature] Date Mailed: December 19, 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
CONTINUATION-IN-PART APPLICATION FOR LETTERS PATENT

Title: CAPSICUM BASED SEED COATING AND METHOD OF USE

Applicant(s):

ROBERT NEUMANN

Filed by:

Ray K. Shahani, Esq.
ATTORNEY AT LAW
Twin Oaks Office Plaza
477 Ninth Avenue, Suite 112
San Mateo, California 94402-1854
Registration No; 37,554

Tel: (650) 348-1444
Fax: (650) 348-1444
E-mail: rks@attycubed.com

///

RELATED APPLICATIONS

This application is a Continuation-In-Part of U.S. Application Serial No. 10/158,593 filed May 30, 2002, entitled CAPSICUM BASED SEED COATING AND METHOD OF USE, and claims any and all benefits of priority of filing dates as it is entitled to. This application is also
5 related to U.S. Provisional Application Serial No. 60/294,374 filed May 30, 2001, entitled CAPSICUM BASED SEED COATING AND METHOD OF USE, and claims any and all benefits of priority of filing dates as it is entitled to. This application is also related to U.S. Patent Application Serial No. 09/747,225 filed December 22, 2000, which is a Continuation-In-Part of U.S. Patent Application Serial No. 09/374,548 filed August 12, 1999, which is a Continuation of
10 U.S. Patent No. 5,937,572 issued August 17, 1999, based on Application Serial No. 08/871,004 filed June 6, 1997, and claims any and all benefits of priority of filing dates as it is entitled to.

///

FIELD OF THE INVENTION

The present invention relates generally to pesticides and methods for extermination of undesirable living organisms. More particularly, the present invention is a novel compound and method for coating crop and other seeds, such as for agricultural purposes, for preventing
5 destruction thereof by insects, other pests, rot, fungus, molds, etc.

///

BACKGROUND OF THE INVENTION

Presently, much is known about capsicum. A current internet site located on the world wide web at <http://neptune.netimages.com/%7Echile/science.html> provides a great deal of background information. Peppers are members of the genus *Capsicum*, and the family *Solanaceae*, which include eggplant and tomatoes. The name *Capsicum* comes from the Greek *kapto*, which means "to bite".

It is estimated that there are at least 26 species of peppers categorized at present, most of which are found in the wild. There are five species of domesticated peppers: (1) *annuum*, from "annual; this includes most of the common peppers found in markets including bell peppers, jalapeños and New Mexican; (2) *baccatum*, from "berry-like"; these are the aji peppers found commonly in South America; (3) *chinense*, meaning "from China"; this includes the famous habanero, Scotch Bonnets, etc.; (4) *frutescens*, meaning "brushy" and are the tabasco peppers; and (5) *pubescens*, from "hairy"; these are the South American rocoto peppers. References to *annuum* species often include the pod type. Due to easy inbreeding between *annuum*, *chinense* and *frutescens*, there are hundreds of different varieties found throughout the world. All peppers originated in the New World. The origin seems to be in the area of Bolivia and Paraguay in South America. Wild peppers were spread by birds, who are apparently unaffected by the heat of the fruit.

Many varieties of the *Capsicum* species are not hot, or pungent. Most paprikas grown in Europe and bell peppers grown in the US have little or no pungency. These varieties are used fresh, or often used to color other foods. The wilder varieties, on the other hand, range from mildly to extremely pungent. This is entirely due to the substance capsaicin, or, actually, a group of similar substances called capsaicinoids. Pure capsaicin, or 8-methyl-n-vanillyl-6-nonenamide, is a

whitish powder which is soluble in alcohol but insoluble in cold water, which is why drinking water to help alleviate the burning won't work. The capsaicinoids are unique compared to other "spicy" substances such as mustard oil (zingerone and allyl isothiocyanate), black pepper (piperine) and ginger (gingerol) in that capsaicin causes a long-lasting selective desensitization to the irritant pain by repeated doses of a low concentration or a single high concentration dose.

The use of capsicum in an aqueous solution for exterminating termites is completely unknown. Numerous other uses for chile peppers have been patented. U.S. Patent No. 5217708 teaches an aerosol lachrymator formulation having all natural pepper extracts as the active ingredients. The lachrymator formulations are useful in self-defense devices. The formulations are non-toxic and have a broader spectrum of activity than man-made lachrymators. These aerosol formulations rely on a carbon dioxide propellant.

Numerous applications of capsicum for medicinal or therapeutic purposes, such as in cough drop formulations, analgesics, thermo slimming cosmetic compositions, ache and pain compounds and arthritis compositions are found in U.S. Patent Nos. 4980169, 4931277, 4702916, 4795638, 4592912 and 4271154. These applications are unrelated to the present invention.

Numerous applications include the use of capsicum to discourage growth of living organisms. U.S. Patent No. 5226380 teaches a covering material for underwater objects such as boat hulls or water intake pipes. The covering includes a waterproof coating such as adhesive or paint containing capsicum derivatives such as cayenne pepper or oleoresin capsicum, with the coating applied to the outer surface of the object to be protected, to repel marine organisms which might otherwise attach themselves to the object.

U.S. Patent Nos. 5599803 and 5525597 teach insecticidal compositions, comprising normally-employed insecticides but comprising also an effective activity-enhancing amount of capsaicin or other capsaicinoid, especially in the form of capsicum, which exhibit synergistic effects against numerous insects, including especially bud worms, boll worms, cabbage loopers,
5 army worms, beet army worms, and beetles, and are especially effective on cotton, soybeans, common garden vegetables, and flowers, when sprayed on the insect or its habitat, especially as an aqueous solution, suspension, or emulsion. Larger crop stands may be effectively treated by aerial spraying from the usual crop-dusting airplane.

10 U.S. Patent No. 5514779 teaches biocidal proteins capable of isolation from seeds have been characterized. The proteins have an amino acid sequence containing the common cysteine/glycine domain of Chitin-binding Plant Proteins but show substantially better activity against pathogenic fungi, a higher ratio of basic amino acids to acidic amino acids, and/or antifungal activity which results in increased hyphal branching. Antimicrobial proteins isolated
15 from Amaranthus, Capsicum, Briza and related species are provided. The proteins show a wide range of antifungal activity and are active against Gram-positive bacteria. DNA encoding the proteins may be isolated and incorporated into vectors. Plants may be transformed with this DNA. The proteins find agricultural or pharmaceutical application as antifungal or antibacterial agents. Transgenic plants expressing the protein will show increased disease resistance.

20 U.S. Patent No. 5240708 teaches a composition and method for spraying an area to inhibit web growth and discourage spiders, other insects or the like from returning to the sprayed area. The solution includes liquid soap that is blended with oil of anise and coriander oil. Capsicum is then added and completely blended in the soap mixture. The mixture is blended with an acetic acid
25 solution to form the solution.

U.S. Patent No. 5544304 teaches a composition for repelling birds, the composition having as active ingredients finely divided dried pepper from pungent fruits of plants of the genus Capsicum and finely divided dried garlic and typically being diluted by inert, finely divided mineral material or water for application to the earth surface or to growing plants to repel birds given to eating seeds, plants, vegetables, and fruits.

With regard to the prior art teaching the use of capsicum as an adjunct ingredient to an insecticidal composition, all of these compositions include the use of other, toxic, non-capsicum based chemicals. The use of capsicum therein is as an adjunct, not as a replacement. The use of a solution of capsicum alone in water is neither taught nor suggested in any of the relevant prior art available.

In the generally well known and accepted prior art for extermination of termites and other insect infestations, little is known regarding the availability of safe, efficacious and non-toxic to humans formulations or methods. Methyl bromide is a common chemical which does damage to the ozone layer, is volatile and is very toxic to humans. The gas or liquid is injected directly into soil for extermination of, for example, undesirable crop insects. At present, however, the use of methyl bromide is being discontinued due to changes in the law. However, other chemicals also have similar drawbacks - they are either damaging to the environment or are toxic to humans, or any combination of the two.

One non-chemical approach to termite extermination is taught by U.S. Patent No. 5,165,199 issued Nov. 24, 1992 to Tallon. This invention concerns a non-toxic method of exterminating dry wood termites, fleas, roaches, ants, weevils and the like by utilizing an inert freezing liquid such as liquid nitrogen as the killing agent. The liquid nitrogen is inserted so as to

envelop the colony of objectionable organisms until the environment is reduced to a temperature of at least zero degrees Fahrenheit and maintained at that temperature for between 2 to 5 minutes. Unfortunately, this method requires transportation of heavy, compressed gas-type cylinders for containing the freezing cryogenic liquid. Furthermore, the use of such materials is not only
5 expensive but dangerous, and an accident operating the tanks and transfer equipment can cause significant bodily injury to operators and others.

Thus, while it is known that capsicum and pepper-extract containing formulations exhibit properties which repel animals such as ocean crustaceans, crop and plant insects, birds, etc., there
10 is no reference in the prior art to the use of such formulations for exterminating termites or for clearing existing insect and pest infestations from soil or structures.

One of the drawbacks of using aqueous solutions is that they can create splashes, leaks, vapors, steam if heated, fogs or sprays. Handling such materials can be dangerous, difficult, and
15 may require certain equipment including special containers, special pouring and mixing techniques or equipment, specialized protective clothing, for workers, etc. It would be desirable to provide a liquid insecticidal or pesticidal composition which comprises capsicum as the active killing agent along without the drawbacks described above.

As is well known, the use of toxic chemicals to control insects for agricultural purposes causes damage and pollution of the environment. Certain chemicals have become heavily controlled or banned altogether due to the impact on the environment, due to their impact on infants, children and other humans, etc. Dursban (TM), a common and well-known chemical is currently undergoing legislative review, and its future and further use is questionable. Therefore, it
20 is desirable to develop an alternative to Dursban or other chemicals which have a lasting, negative
25

impact on the environment.

U.S. Patent Nos. 6,022,871 and 5,852,012, issued February 8, 2000 and December 22, 1998, respectively, both entitled OXADIAZINE DERIVATIVES, teach the use of chemicals for coating or soaking seed kernels to impart particular insecticidal activity thereto. As with the other application, the chemicals used are toxic, and potentially damaging to the environment. An alternative insecticidal agent would be useful for providing these seed coatings, and such applications.

10 ///

ADVANTAGES AND SUMMARY OF THE INVENTION

Therefore, it is an advantage and an objective of the present invention to provide a safe and economical method and composition formulation for imparting insecticidal properties to crop or other agricultural seeds by coating, soaking, etc.

5

It is a further advantage and objective of the present invention to provide such method and composition which is environmentally safe.

It is yet a further advantage and objective of the present invention to provide a method and
10 formulation of preventing damage to all types of seeds or grain or similar agricultural products from all types of insects or other agricultural pests including grasshoppers, moths, aphids, boll weevils, cabbage seed pod weevils, etc.

It is yet a further advantage of the present invention to provide a liquid coating or treating
15 solution containing capsicum as the active killing agent, which avoids the drawbacks of using an aqueous composition, said drawbacks including splashing and spraying, creating fogs or mists during handling, mixing or manufacturing, etc.

It is yet a further object and advantage of the present invention to provide a safe,
20 environmentally friendly, effective insecticide for controlling insects and pests associated with agricultural insects, agricultural pests, etc.

In summary, the present invention is a method for coating or soaking or otherwise treating seeds, grains, and other similar agricultural products to render them free and safe from damage by
25 insects and related agricultural pests comprising an aqueous solution, powder, emulsion, or dry

coating having a predetermined amount of capsicum.

Adding an inert carrier oil, such as mineral oil, to the composition will render the aqueous solution slightly more viscous, less prone to splashing or spray, and less prone to fogging or misting. The composition can comprise from between 0.1% to about 100% inert carrier oil. Mineral oil is a very common, non-toxic oil which is readily available. Other environmentally safe oils or carrier liquids can be used, including various types of mineral oils, castor oil, other hydrocarbons and paraffinic oils, etc.

One of the major concerns today for any product is its toxicity. Mineral oils and pharmaceutical grades of petrolatum have a long history of wide use by man and controlled tests on animals which attest to their lack of toxicity. Mineral oil has been taken as an internal lubricant for a great many years and both mineral oils and petrolatums have been used as manor ingredients of cosmetics and ointments for an even longer period of time. Passage of the Food Additives Amendment in 1959 let the FDA to require feeding studies with animals on both mineral oils and petrolatums before they could be permitted to be used as additives in food. In fact, many of the hydrocarbons present in mineral oils and petrolatums are also present in many widely distributed natural products, both plant and animal. In general, however, it is still assumed that little if any mineral oil is absorbed if taken internally or externally, but that some indication is given that metabolism of some of the oil components can and may certainly take place.

Application of a coating for seeds, grains, and similar agricultural products comprising a killing solution can be effective in killing insects which have the potential for wreaking havoc in crops. The present invention can be used like any other insecticide, but it is safe to use, environmentally friendly, and is non-toxic to humans. The insecticide comprising capsicum in an

aqueous formulation of water can be used to treat crops by spraying, delivery in irrigation systems, etc., as is well known in the use of insecticides.

Thus, it is a further advantage and objective of the present invention to provide a new,
5 effective method and composition for coating seeds, grains and similar agricultural products.

Thus, it is a further advantage and objective of the present invention to provide a new,
effective composition and method for coating seeds, grains and similar agricultural products. It is
an advantage and objective of the present invention to provide product treatment which affects
10 laboratory germination of corn, soybean and sunflower seed, both over the short-term and the
long-term.

It is an advantage and objective of the present invention to provide a product treatment
which affects germination, i.e. emergence and rate of emergence, under field conditions.

15 It is an advantage and objective of the present invention to provide a product treatment
which has an effect in repelling or killing targeted insects, both in the field and in storage settings.

It is an advantage and objective of the present invention to provide product once applied,
20 which is still working a year or more later, i.e., a product with a substantial shelf life once applied.

It is an advantage and objective of the present invention to provide treatment at the rate
needed for effective insect control, and multiple rates and various concentrations are contemplated.

In the field, the product is used as an insecticide spray, and on the seed it acts as an insecticide.

25

Numerous other advantages and features of the present invention will become readily apparent from the following detailed description of the invention and the embodiments thereof, from the claims and from the accompanying drawings.

5 ///

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is the chemical structure of capsaicin.

FIG. 2 is a plot showing biodegradation of different types of oils in shake flask tests.

5 ///

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

FIG. 1 is the chemical structure of capsicum or capsaicin **100**. Capsaicin, also known as N-vanillyl-8-methyl-6-(E)-nonamide, is the most pungent of the group of compounds called capsaicinoids isolated from peppers. It is sparingly soluble in water, but very soluble in fats, oils and alcohol. The second most common capsaicinoid is Dihydrocapsaicin. Capsaicin and Dihydrocapsaicin together make up 80-90% of the capsaicinoids found in the fruit. In *C. annuum* the total capsaicinoid content ranges from 0.1 to 1.0%, and the capsaicin:dihydrocapsaicin ratio is about 1:1. In *C. frutescens*(Tabasco peppers) the total content ranges from 0.4-1.0% with the ratio around 2:1.

The minor capsaicinoids include Nordihydrocapsaicin [Dihydrocapsaicin with (CH₂)₅ instead of (CH₂)₆], Homocapsaicin [Capsaicin with (CH₂)₅ instead of (CH₂)₄], and Homodihydrocapsaicin [Dihydrocapsaicin with (CH₂)₇ instead of (CH₂)₆]. The pungencies of these five pure compounds in Scoville Units (SU) are as follows:

Compound	Pungency x 100,000 SU
Capsaicin	160
Dihydrocapsaicin	160
Nordihydrocapsaicin	91
Homocapsaicin	86
Homodihydrocapsaicin.	86

Govindarajan, VS and Sathyanarayana, MN; Capsicum - Production, Technology, Chemistry and Quality. Part V. Impact on Physiology, Nutrition and Metabolism; Structure, Pungency, Pain and Desensitization Sequences, *Crit. Rev. Food Sci. Nutr.* 29, 435. 1991 There are also homologs and analogs, such as with straight alkyl chains, that exist in nature.

Quantization of capsicum amount in solutions is an important tool in manufacture.

Following is a high performance liquid chromatography (HPLC) method for capsaicin

determination: 25 g ground red pepper extracted in 200 mL 95% ethanol at 65- 75 C for 5 hours, allow to settle, decant, and cool to 20 C. 50 microliters injected from a 100 microliter Hamilton

5 LC syringe via a Waters U6K injector into a Waters HPLC system with a 10 micron micro-Bondapak C18 column and a Bondapak C18/Corasil guard column and a UV detector set at 280 nm. HPLC operated isocratically with a Waters 660 solvent programmer using a mobile phase of 40:60 v/v acetonitrile:water (1% acetic acid) at 1.5 mL per minute. Quantization done using commercially available N-vanillyl-n-nonamide as an external standard. Hoffman, Patrick G.; Lego, Mary C.; and Galetto, William G. "Separation and Quantization of Red Pepper Major Heat
10 Principles by Reverse-Phase High-Pressure Liquid Chromatography" J. Agric. Food Chem. 1983, vol. 31 pp 1326-1330.

Experimentally, it has been found that capsicum containing aqueous solutions are effective
15 for exterminating drywood, subterranean and dampwood termites, wood boring beetles, fungi of various types, mosquitoes, flies, earthworms and spiders. Using a hot, pungent variety of a typical pepper such as *C. annuum* with an average of about 0.5% capsaicin content, a solution containing as little as 10 grams of ground pepper in about 454 mL water will contain about 0.01% capsaicin, sufficient for most applications disclosed herein. Therefore, optimally an aqueous solution will
20 contain between about 0.00001% and about 1.0% by weight capsaicin or capsicum.

The solution can be formed using ground peppers mixed directly into water. The peppers may be dried or fresh, chopped or ground or powdered. To increase solubility of certain preparations of chilli peppers, the temperature of the water can be raised to room temperature or
25 above. Electric or manual mixers can be employed, and it will be understood that a certain,

predetermined time constant related to the solubility of the pepper material in the aqueous solution will be a factor to consider in preparing the solution.

It will be understood, therefore, that alternative methods of exterminating soil or other portions of structure or materials include injecting the killing solution, in either a vapor, spray, mist or liquid form, between some barrier component and the infestation. Said barrier component could be a plastic sheet or rubber tarp, net mesh, etc., and will be known to those skilled in the art. Additionally, the killing solution can be applied underneath vapor barriers into the soil to eliminate nematodes and other undesirable insects or pests in soil prior to or concurrent with other agricultural activities.

It has been observed experimentally that the rate of killing of the insects is often proportional to the concentration of the capsicum containing ingredients in the killing solution. It will be understood, additionally, that the term capsicum as used herein shall serve to include any material containing, but not limited to, capsicum itself, any chemically synthesized or natural extract of any plant of the genus Capsicum, any material containing capsaicin, any of the capsinoids or capsaicinoids, homologs, analogs, derivatives or similar compounds or formulations.

Solvent/Carrier

As described above, the principle solvent for the formulations of the present invention is water. Additional chemicals in the present formulation include surfactants, sticking agents, preservatives or biocidal agents, coloring dyes or agents, fragrance, etc.

In a preferred embodiment, the formulation of the present invention contains mineral oil.

In a preferred embodiment, the killing solution contains a sticking agent. In a preferred

embodiment, the method for exterminating ants, termites, other pests, including agricultural pests consists of contacting the ants, termites, other pets, or agricultural crops with an aqueous formulation containing capsicum and mineral oil whereby the aqueous formulation is a killing solution. In a preferred embodiment, the concentration of mineral oil in the aqueous solution is about 1%, or more or less. In a preferred embodiment, the concentration of mineral oil in the aqueous solution is about 0.1% to about 100%, or more or less. In a preferred embodiment, the concentration of mineral oil in the aqueous solution is about 10%, or more or less. In a preferred embodiment, the concentration of mineral oil in the aqueous solution is about 90%, or more or less.

As described above, the addition of an inert carrier oil assists in handling of the liquid insecticidal formulations containing capsicum. Mineral oil has been found to be a preferred additive to the present invention. Use of mineral oil in the formulation enhances dispersion, reduces fogging or misting of a potentially irritating or noxious odor. Mineral oil is non-toxic to humans, and is safe to use in households and other animal and people environments. The inert carrier oil added to the killing solution can be a combination of one or more inert carrier oils selected from the group consisting of mineral oil, organic oils, animal and vegetable oils, castor oil, hydrocarbon oils, and paraffinic oils.

FIG. 2 is a plot showing biodegradation of different types of oils in shake flask tests. The inoculum used is regular lake water. The oils were added at 0.01% (V/V) to M9 mineral salts medium (50 mL) in 250-mL-volume conical flasks and inoculated with 1 mL of lake water bacteria collected on a bacterial filter and resuspended to 10⁵ cfu/mL. Flasks were incubated at 25°C and shaken at 100 rev/min. Control flasks were poisoned with HgCl₂ at zero time and showed that oil disappearance by abiotic agencies was less than 7% in all cases. The oils used were: (1) mineral

oil; (2) a TMP-triester; (3) a pentaerythritol tetraester; (4) sunflower seed oil; (5) "Biolube 100", a commercial fully-formulated 2-stroke oil containing a TMP-ester base oil; (6) TMP -triester with a commercial additive package added at a normal level; and (7) the same oil containing twice the normal additive level.

5

It will be understood that the low rates of biodegradation of mineral oils contribute to the benefit of the present invention. Mineral oils, compared to other oils, have the added benefit of being resistant to biodegradation. The residue containing the active ingredient capsicum, or other form of capsaicin, is effective as an insecticide for longer than would be possible using other forms of carrier oils.

10

The following table is a short list of specification for a few different types of mineral oils available:

Inert Carrier Oil Specifications

15

Spray Spec's Oil-Base

Viscosity @ 100°F, Sus	60-65N	70N	70-100N	150N
Mass Boiling, % < 340°C, ¹	35 max	10 max	10 max	10 max
Mass Boiling, % > 393°, ²	10 max	35 max	70 max	70 max
Paraffinic, %, ³	60 min	60 min	60 min	60 min
20 Aromatic, %	3 max	3 max	4 max	5 max
Acidity, mg KOH after exposure to UV, ⁴	0.3 max	0.3 max	0.1 max	1.0 max

1. This temp equivalent to C₂₀ n-paraffin and is the lower limit for pesticidal activity.

2. Equivalent to a C₂₄ n-paraffin. The fraction boiling > C₂₄ can be phytotoxic due to

25

prolonged ex-cuticular perseverance with subsequent photodegradation to toxic acids.

3. ASTM E 1519-93 definition of paraffinic oil

4. Modifies ASTM E 896-92, 10 mL oil in open petri dish, exposure is 365 nm UV at 2 mW/cm² for 4 hr.

5 It will be understood that these and other types of mineral oils and petrolatums may be used in conjunction with the killing solution of the present invention to enhance handling characteristics, residue on surfaces, etc.

Applications

10 In preferred embodiments of the method and formulations of the present invention, use of a capsicum or other capsaicin-containing solution is effective in sterilizing, as an antimicrobial or sterilizing agent, for use in meat processing plants. These formulations can be used for sterilizing other equipment and food products used in such industries. Reducing the spread of E. coli, Salmonella, and other pathogenic bacteria can be very effective when these formulations are used in restaurants, food processing and animal processing areas or facilities.

15

Crop Insects and Pests

Agricultural, primarily crop, insects and pests are of primary concern in agricultural areas. The killing solution, comprising an aqueous formulation of capsicum or other capsaicinoid, of the present invention is effective against a range of pests and insects, including all types of: ants, termites, mosquitoes, flies and fleas, beetles, aphids, mites, flea beetles, cabbage seed pod weavils, glassy wing sharpshooters, striped cucumber beetles (*Acalymma vittatum*), spotted cucumber beetles (*Diabrotica undecimpunctata howardi*), Colorado potato beetle (*Leptinotarsa decemlineata*), and flea beetles (*Epitrix* spp.) as well as laboratory-cultured *D. undecimpunctata howardi*, diamondback moth (*Plutella xylostella*), corn earworm (*Helicoverpa zea*), silverleaf whitefly (*Bemisia argentifoli*), imported cabbageworm (*Pieris rapae*), and cabbage maggot (*Delia*

20

25

radicum), insects in the order Coleoptera, insects in the order Lepidoptera, insects in the order Diptera, insects in the order Homoptera, insects in the order Isoptera, insects in the order Hemiptera, insects in the order Orthoptera, and insects in the order Thysanoptera, Northern Corn Root Worms (*Diabrotica barberi*),) Western Corn Root Worms (*Diabrotica virgifera*), Flea Beetles (5 *Epitrix* spp.), Diamondback Moth (*Plutella xylostella*), Corn Earworm (*Helicoverpa zea*), Cabbage Maggot (*Delia radicum*), Seed Corn Maggot (*Delia platura*), Onion Maggot (*Delia antiqua*), Cotton Bollworm (*Heliothis virescens*), Pink Bollworm (*Pectinophora gossypiella*), Silverleaf Whitefly (*Bemisia argentifolii*), Imported Cabbageworm (*Pieris rapae*), and Fungus Gnats (*Mycetophilidae* spp.).

10

Thus, the present invention is directed to the use of capsicum or other form of capsaicin for use as an insecticide in agricultural purposes. Such include, but are not limited to, fruit trees and bushes, vegetables, corn, soy beans, grapes, corn, peas, cabbage, lettuce, watermelon, tomatoes, carrots, rhubarb, peppers of all kinds, eggplants, cannola seed, rapeseed, cannabis, (15 apples, cherries, lemons, figs, avocados, grapefruit, oranges, limes, spice plants including herbs, parsley, cilantro, garlic, ginger, onion, potatoes, other seed crops, ornamental and edible flowers, organic vegetables, mustard, collard, chard, spinach and other greens, the use of capsicum and water provides a very effective, organic and environmentally-friendly insecticide. The addition of other additives, including mineral oil, surfactants, etc., provides a formulation which is very easy (20 to handle, very effective anti-insecticidal, and is also environmentally non-toxic or damaging. Delivery can be any known or novel method of delivery of fluid insecticidal compositions to plants or crops or other agricultural lands, including but not limited to manually, via mechanical or other fluid sprinkler means, tractor and spray equipment, dusting, air drop or airplane fly-over and delivery from above, etc. The use of capsicum for this purpose, in this formulation and method of (25 use, is heretofore unknown, is novel and unique and non-obvious, and provides unexpectedly-high

satisfactory results.

Seed and Grain Coating, Soaking

As described above, by utilizing the killing solution as a coating or soak, the insecticidal
5 activity of capsicum can be imparted to seed or grain or other agricultural products. A formulation
comprising between about 0.01% to about 10%, more preferably about 1% to about 5%, capsaicin
or other form capsicum , can be used. The aqueous concentration can be made into a paste and
sprayed onto grain or seeds. Seeds or grain can be coated in any of various ways. The formulation
can be a thick paste, emulsion, or it can be a thinner, liquid. The formulation can be formed to be a
10 powder or non-liquid coating on the seed or grain..

Alternatively, insecticidal activity can be given to the grain or seed by soaking in a killing
formulation comprising capsicum. A liquid formulation can be used to soak or spray the seed or
grain. The seed or grain can have a long or short residence time in immersion or contact with the
15 formulation containing capsicum. Rinsing or spraying the seed or grain is preferred, and a
subsequent drying step may also be necessary, such as including the use of hot or warm air,
circulating air, blow drying, drying on conveyor belts through ovens or other chambers, etc.

By soaking seed or providing a protective coating, protection against a variety of different
20 insects and agricultural pests, including those listed above, can be obtained.

EXAMPLES

Study 1:

The Use of Pepper Extract as a Possible Mortality Agent against Termites

25 Objective

To determine whether the active ingredients in "Habanero" peppers (assumed to be capsicum) have the ability to kill termites.

Methods

"Habanero" Pepper Solution

5 Ten medium sized "Habanero" peppers were finally chopped and allowed to soak for three hours in 600 mL. of purified water. The solution was then filtered into a spray bottle for experiments.

Termites:

2 termite species, commonly known as drywood and subterranean termites, were collected
10 in the field. Twenty-five drywood termites were divided into two groups: one which contained 14 termites and one which contained 11 termites. Each group of termites was placed in a 9 cm diameter petri dish containing moistened filter paper. The first group containing 14 termites was subjected to three bursts from the spray bottle containing the pepper extract. The second group consisting of 11 drywood termites was subjected to three bursts from a spray bottle containing
15 water only which served as a control. The same experimental design was used for subterranean termites except the treatment and control groups contained 14 and 13 termites, respectively.

Termites were maintained in their respective petri dishes for 24 hours, after which counts were made to determine the number of termites surviving for each group.

20 Significant differences in survivorship were compared for each species using a x2 test of independence.

Results

Data for subterranean termites are shown below. Thirteen of 14 termites were dead after 24 hrs. when exposed to pepper extract. No termites in the water controlled died in this period.

25 This result is statistically significant based on the following computations:

	Observed	Alive (after 24 hrs.)	Dead (after 24 hrs.)	Totals
				frequencies
	Pepper extract	1	13	14
	Water control	13	0	13
5	Totals	14	13	27

From the data we can predict expected frequencies

	Observed	Alive (after 24 hrs.)	Dead (after 24 hrs.)	Totals
				frequencies
	Pepper extract	7.3	6.7	14
10	Water Control	6.7	6.3	13
	Totals	14	13	27

The χ^2 value is calculated below:

$$\chi^2 = \frac{(|1-7.3|-.50)^2}{7.3} + \frac{(|13-6.7|-.50)^2}{6.7} + \frac{(|13-6.7|-.50)^2}{6.7} + \frac{(|0-6.3|-.50)^2}{6.3}$$

15 $\chi^2 = 19.9, df = 1$

χ^2 Table value = 7.9 at $p = 0.005$

Because the obtained value (19.9) is greater than the table value (7.9), we can conclude that pepper extract is significantly associated with subterranean termite mortality. There is only a .05% probability that our results were due to chance alone.

20 Conclusions:

Based on this experiment is concluded that "Habanero" pepper extract has the ability to kill subterranean termites under the following controlled laboratory conditions: direct contact with the pepper extract and continuous exposure to this extract for 24 hrs. in a contained environment.

25 Study 2:

The Use of Synthetic Oleoresin as a Possible Mortality and Repellent Agent Against Ants

Objective

To determine whether water soluble oleoresin capsicum has the ability to kill and repel Argentine ants.

Methods

5 Oleoresin Capsicum Solution

Capsicum solutions were used for this experiment prepared by adding 5 and 20 mL of capsicum (250,000 Scoville units) to 45 and 30 mL of water to make solutions of 10% and 40% capsicum, respectively.

Mortality Tests

10 The Argentine ant (*Irdomyrnex humilis*) were collected in the field. At least 30 individual ants were placed in a 9 cm. diameter petri dish containing filter paper. Fluon was painted on the sides of dishes to prevent escape. Ants were then subjected to three bursts from a spray bottle containing the 10% capsicum extract. A similar petri dish with ants was prepared and sprayed with distilled water as a control. This experiment was then repeated using the 40% solution. Ants were
15 maintained in their respective petri dishes for 1 hour, after which counts were made to determine the number of ants surviving for each group. Significant differences in survivorship were compared for each species using Fisher's exact test of independence.

Results

20 Fisher Exact Test Ants 10%

Subjects	Alive	Dead
Row 1	30.000	3.000 Counts
	12.375	20.625 Expected Counts
	90.909	9.091 Row %
25	100.000	6.000 Column %

	37.500	3.750 Total %
Row 2	0.000	47.000 Counts
	17.625	29.375 Expected Counts
	0.000	100.000 Row %
5	0.000	94.000 Column %
	0.000	58.750 Total %

Fisher Exact Test Ants 40%

	Subjects	Alive	Dead
	Row 1	30.000	0.000 Counts
10		11.538	18.462 Expected Counts
		100.000	0.000 Row %
		100.000	0.000 Column %
		38.462	0.000 Total %
	Row 2	0.000	48.000 Counts
15		18.462	29.538 Expected Counts
		0.000	100.000 Row %
		0.000	100.000 Column %
		0.000	61.538 Total %

20 The proportion of observations in the different categories which define the contingency table is significantly different than is expected from random occurrence (P= 0.001)

Conclusions

25 Few ants died when subjected to water alone in both experiments. However, all ants subjected to both capsicum solutions died within minutes of exposure. There was a significant difference between treatments and controls indicating that capsicum at these concentrations is lethal to Argentine ants.

Study 3:

The Use of Oleoresin Capsicum as a Possible Mortality Agent against Dampwood Termites

Objective

To determine whether water soluble oleoresin capsicum kills dampwood termites

5 Methods

Oleoresin Capsicum Solution

Dried fruit of Capsicum frutescens and/or C. Annuum measured at 500,000 Scoville heat units

Mortality Tests

10 Dampwood termites (*Zootermopsis spp.*) were collected in a field. Twenty individual termites were placed in a 9 cm. diameter petri dish containing filter paper. Termites were then subjected to three bursts from a spray bottle containing the capsicum extract. A similar petri dish with termites was prepared and sprayed with distilled water as a control. Termites were maintained in their respective petri dishes for each group. Significant differences in survivorship were
15 compared using a chi-square test.

Results

Data for dampwood termites are shown below.

Observed	Alive (after 24 hrs.)	Dead (after 24 hrs)	Totals frequencies
Pepper extract	0	20	20
20 Water control	20	0	20
Totals	20	20	40

From this data we can predict expected frequencies

Expected	Alive (after 24 hrs.)	Dead (after 24 hrs)	Totals frequencies
Pepper extract	10	10	20
25 Water control	10	10	20

40

$$x^2 = \frac{(|0-10|-.50)^2}{10} + \frac{(|20-10|-.50)^2}{10} + \frac{(|20-10|-.50)^2}{10} + \frac{(|0-10|-.50)^2}{10} = 36.1$$

χ^2 Table value=7.9 at $p=0.005$

Conclusions

Title: CAPSICUM BASED SEED COATING AND METHOD OF USE
Serial No.: NA
Attorney Docket No.: NEU-108

were placed in a 9 cm. diameter petri dish containing filter paper. Fluon was painted on the sides of dishes to prevent escape. Ants were then subjected to three bursts from a spray bottle containing the capsicum extract. A similar petri dish with ants was prepared and sprayed with distilled water as a control. Ants were maintained in their respective petri dishes for 1 hour, after which counts were made to determine the number of ants surviving for each group. Significant differences in survivorship were compared using a chi-square test.

Results

Data for odorous house ants are shown below.

Observed	Alive (after 24 hrs.)	Dead (after 24 hrs)	Totals frequencies
10 Oleoresin capsicum	0	20	20
Water control	20	0	20
Totals	20	20	40

From this data we can predict expected frequencies

Expected	Alive (after 24 hrs.)	Dead (after 24 hrs)	Totals frequencies
15 Oleoresin capsicum	10	10	20
Water control	10	10	20
Totals	20	20	40

The χ^2 value is calculated below:

$$\chi^2 = \frac{(0-10)^2}{10} + \frac{(20-10)^2}{10} + \frac{(20-10)^2}{10} + \frac{(0-10)^2}{10} = 36.1$$

Formula, table values, and computations can be found in Biometry, by Sokal and Rolf.

$$\chi^2 = 36.1, df = 1$$

χ^2 Table value = 7.9 at $p = 0.005$

Conclusions

Because the obtained value (36.1) is greater than the table value (7.9), we can conclude that water soluble oleoresin capsicum is significantly associated with odorous house ant mortality. Odorous house ants exposed to water soluble oleoresin capsicum at a concentration of 500,000 scoval units were killed on contact.

5

Study 5:

The Use of Oleoresin Capsicum Extract as a Possible Mortality Agent against Subterranean Termites

Objective

10 To determine whether oleoresin capsicum extract mixed with mineral oil has the ability to kill subterranean termites.

Methods

Oleoresin Capsicum Solution

15 A capsicum solution used for this experiment was prepared by adding .25 grams of capsicum extract in 200ml of light mineral oil. Mineral oil alone served as a control.

Mortality Tests

20 Subterranean termites were collected in the field. At least 20 individual termites were placed in a 9 cm. diameter petri dish containing filter paper. Termites were then subjected to three bursts from a spray bottle containing the capsicum extract. A similar petri dish with termites was prepared and sprayed with mineral oil only as a control. Termites were maintained in their respective petri dishes for 1 hour, after which counts were made to determine the number of ants surviving for each group. Significant differences in survivorship were compared for each species using Fisher's exact test of independence.

Results

25 Fisher Exact Test-Termites

	Subjects	Alive	Dead
	Row 1	0.000	20.000 Counts
		0.000	20.000 Expected Counts
		0.000	100.000 Row%
5	(NAN)	50.000	Column%
		0.000	50.000 Total%
	Row 2	0.000	20.000 Counts
		0.000	20.000 Expected Counts
		0.000	100.000 Row%
10	(NAN)	50.000	Column%
		0.000	50.000 Total%

Conclusions

The proportion of observations in the different categories which define the contingency table is not significantly different than is expected from the random occurrence ($P = 1.000$)

15 All of the termites exposed to the capsicum mixed with mineral oil died within seconds. From this data we can conclude that capsicum mixed with mineral oil has an impact on termite mortality.

20 Further testing has shown that the killing solutions described herein are effective, long-lasting, and environmentally friendly. While lethal to insects, including spiders, ants and termites, the active ingredient capsicum or other form of capsaicin and the inert carrier oil such as mineral oil are all safe for use in the environment, are essentially non-toxic to humans in the concentrations used herein, and are readily available.

25 Study 6:

The following is a set of experiments listed as they were performed, in chronological order:

Friday, July 14, 2000

First mixed a solution of 1% Capsaicin and sprayed four flea beetles and two cabbage seed
5 pod weavils and one lygus bug. After one minutes, one flea beetle was not moving. At five
minutes, three were still. After fourteen minutes the flea beetles and the cabbage seed pod weavils
were all dead. It took fifty-six minutes to kill the lygus bug. Sprayed some bugs on a cannola plant
out in the field. Marked the plant for observation and watched the flea beetles drop off and crawl
away. For the testing used a glass vial to hold bugs and a fine misting spritzer bottle to spray the
10 bugs. Used three squirts for the first two tests.

#3. Collected a small sack of canola insects and dumped them into a large Coleman cooler
with a screen over the top., containing approximately 100 flea beetles and 20 cabbage seed pod
weavils. Sprayed the 1% solution over the top of them and observed. After ten minutes the bugs
15 appeared quiet, after thirty minutes bugs became very active. Added a little more mist at thirty-three
minutes, at forty-seven minutes bugs appear still but move or jump when probed with a pencil.
Sixty-two minutes bugs appear healthy. Started new vial test. One hundred-ten minutes the flea
beetles in vial barely alive. Bugs in cooler very healthy again. Next morning, bugs in vial dead. 40%
of flea beetle in cooler are dead. No dead cabbage seed pod weavils.

20

#4. 3% solution and re-sprayed "live" cooler bugs. Fifteen minutes later flea beetles were
dead and one cabbage seed pod weevil that was hit directly. Fresh cabbage seed pod weevil in vial
with one blast of 3% solution. Ten minutes the bug is dead. Five hours late no more bugs are dead.
The rest are still unaffected. It appears it takes a complete saturation for prolonged period to kill
25 bugs.

July 20, 2000

Rechecked canola plants in field and they appear to be clear from insects although hardly any insects exist now due to the whole field being sprayed by air with Capture for a bad cabbage seed pod weevil infestation.

5 **August 10, 2000**

Four rows of canola planted in a big planter. Rows were 18 inches long with 6 inch spacing. One row treated with 5% water capsicum solution, one with 5% capsicum and canola oil and one with 5% capsicum with mineral oil. With one row of untreated "control". After five days observed the test and saw that it was germinating. Moved the test outside and introduced it to insects.

10 **August 20, 2000**

Observed test and saw that the seedlings were being eaten by insects. Three days later the plants were dead.

August 28, 2000

15 Sprayed mature plants along field edges with 5% Capsicum solution and observed insects dropping off immediately, bugs appeared to die within minutes, but it was hard to tell if they would recover, like previous tests. This test was to determine if Capsicum would keep bugs off of the plants. After test conducted, it rained for about one week. When returned observed no bugs on any plants anywhere. Even where didn't spray.

20 **USE AS A SEED AND SPRAYED CROP INSECTICIDE - PROTOCOL FOR TESTING**

Crops which can be used are corn, soybeans, and sunflowers, and others are also deemed included. Seed of all three species are provided for treatment with product and returned for studies. The product is supplied with instructions for rate(s) of application for over-the-top application on crops to control midseason to late-season insect infestations. Untreated seed from the same seed lots
25 are also used for comparison and determination of product efficacy.

1) Field Studies

Field Performance Trials

Treated and untreated seed of each crop are planted into current yearly trials and treatment applied during the growing season for performance against targeted insects. The experimental design is a randomized complete block with each treatment replicated four times. Stand counts are made prior to harvest, providing information relating back to seed protection during germination. Yields are also taken, which can be related back to seed and field treatment efficacy. An over-the-top spray treatment is made at the appropriate time to control targeted insects.

Seed emergence study

Treated and non-treated seed of each crop is planted in a randomized complete block design with each treatment replicated four times. Stand counts are taken at five days, 10 days, and 20 days. Either one or multiple locations are utilized.

2) Laboratory studies

Germination studies

Treated and untreated seed are stored under warehouse conditions with germination tests (standardized testing following AOSA Rules for Testing) being ran every month for eight months at three different temperatures (15-30C, 25C, and 20C). Seedlings are evaluated visually for any injury symptoms due to the seed treatment. Any suspected injuries are documented by digital photography.

Storage studies (dependent upon availability of target insects)

Treated and untreated seed are stored under warehouse storage conditions. Heavy targeted insect pressure is added to evaluate efficacy of the product in repelling or killing insects that would

normally feed on these seed/grain species in storage. The percent damaged kernels is evaluated as well as any insect kill percentage. Provided that necessary supplies of live target insects can be obtained, a short-term evaluation (within two months of treatment application) and a long-term check (eight months to one year after treatment application) is made to check efficacy of product over time (shelf-life after application).

Targeted insects will include any crop or seed destroying or eating insect, including crawling or flying insects, fungus, rodents, bacteria, aphids, etc.

Thus, the preferred method of the present invention is a method for protecting crop seeds and grains between planting and emergence, from destruction or compromise by insects, fungus, mold, bacteria and other living organisms. The method consists of contacting the crop seeds and grains with an aqueous formulation containing only water and capsicum as the active ingredient prior to planting the crop seeds and grains. The crop seeds and grains can be contacted with a paste or coating of the capsicum-containing product. Special protection is afforded to the seeds and grains after they have been planted, during specially the initial 28 days of the growing cycle. In the production of cannola, for example, after an initial 28 days, further spraying with conventional pesticides, insecticides and growth factors including fertilizers, may be employed.

It will be understood that the present invention is specifically directed to different seeds, crops and grains as well as with different modalities of destruction including but not limited to insects, fungus, mold, bacteria and other living organisms, and also birds and rodents. The method of the present invention utilizes a composition containing capsicum as the active ingredient, and which may also contain thickeners, adherents, colorants or odorants, other chemicals or compounds, drying agents, and carriers, etc. Furthermore, the method is novel with particular respect to

protection of the seeds from the time between planting to during germination and as emerging seedlings to the time of the initial standard, conventional young plant treatment methods and compounds.

5 Unless defined otherwise, all technical and scientific terms used herein have the same meaning as commonly understood by one of ordinary skill in the art to which this invention belongs. Although any methods and materials similar or equivalent to those described can be used in the practice or testing of the present invention, the preferred methods and materials are now described. All publications and patent documents referenced in this application are incorporated
10 herein by reference.

 While the principles of the invention have been made clear in illustrative embodiments, there will be immediately obvious to those skilled in the art many modifications of structure, arrangement, proportions, the elements, materials, and components used in the practice of the
15 invention, and otherwise, which are particularly adapted to specific environments and operative requirements without departing from those principles. The appended claims are intended to cover and embrace any and all such modifications, with the limits only of the true purview, spirit and scope of the invention.

///